



PUBLIC NOTICE

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AUCTION OF FULL POWER TELEVISION CONSTRUCTION PERMITS SCHEDULED FOR MARCH 15, 2006

Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 64

Report No. AUC-05-64-B (Auction No. 64)

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I. GENERAL INFORMATION

A. Introduction

By this Public Notice, the Media Bureau (“MB”) and the Wireless Telecommunications Bureau (“WTB”) (collectively the “Bureaus”) announce the procedures and minimum opening bid amounts for the auction of 11 full power television station construction permits scheduled to begin on March 15, 2006 (Auction No. 64).¹ On September 23, 2005, in accordance with Section 309(j)(4) of the Communications Act of 1934, as amended,² the Bureaus released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 64.³ The Bureaus received comments from Humberto Lopez in response to the *Auction No. 64 Comment Public Notice*.⁴

1. Background

The Commission’s competitive bidding rules will be used to select among mutually exclusive applications for these construction permits in Auction No. 64.⁵ When two or more short-form applications (FCC Forms 175) are accepted for filing for the same construction permit in Auction No. 64, mutual exclusivity exists for auction purposes.⁶ Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 64 and will remain subject to the Commission’s anti-collusion rules,⁷ but, having purchased no bidding eligibility, will not be eligible to bid.⁸

2. Television Station Construction Permits to be Auctioned

Auction No. 64 will offer 11 construction permits for full power television stations. The construction permits to be auctioned are for vacant television allotments, reflecting television channels assigned to the television Table of Allotments,⁹ pursuant to the Commission’s established rulemaking procedures,

¹ The Commission’s authority to establish a reserve price or minimum opening bid is specified in 47 C.F.R. § 1.2104(c) and (d).

² 47 U.S.C. § 309(j)(4)(F).

³ See Auction of Full Power Television Station Construction Permits Scheduled for March 15, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures for Auction No. 64, *Public Notice*, DA 05-2423 (Sept. 23, 2005) (“*Auction No. 64 Comment Public Notice*”). A summary of this public notice appears at 70 Fed.Reg. 58700 (Oct. 7, 2005).

⁴ Humberto Lopez filed comments on October 10, 2005 (“Lopez Comments”). These comments were posted on the Auctions web site at <http://wireless.fcc.gov/auctions>. We address his comments later in this public notice.

⁵ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *First Report and Order*, 13 FCC Rcd 15920, 15923-25 ¶¶ 7-12 (1998) (“*Broadcast Competitive Bidding First Report and Order*”); *id.*, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999) (“*Broadcast Competitive Bidding First Reconsideration Order*”); *id.*, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999); *aff’d*, *Orion Communications Ltd. v. FCC*, 221 F.3d 196, No. 98-1424, slip op. (D.C. Cir. June 13, 2000) (unpublished opinion available at 2000 WL 816046 (D.C. Cir.); *aff’d*, *Orion Communications Ltd. v. FCC*, 213 F.3d 761 (D.C. Cir. 2000).

⁶ *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15978-80 ¶¶ 149-154. See also Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2376 ¶ 165 (1994) (*Competitive Bidding Second Report and Order*).

⁷ See 47 C.F.R. §§ 1.2105(c) and 73.5002(d).

⁸ *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15980 ¶ 153.

⁹ 47 C.F.R. §§ 73.606 and 73.622.

designated for use in the indicated communities. Ten of these construction permits are “open” to any interested party; the remaining permit is “closed,” and only the five listed parties that previously filed long-form applications may participate in the bidding for this permit (so long as they submit a short-form application and comply with the applicable rules and requirements as outlined in this Public Notice). A complete list of construction permits available in Auction No. 64 is included in Attachment A of this Public Notice.

Interested parties should note that some of the stations listed in Attachment A are single channel, digital-only television stations. Those stations are indicated in Attachment A as “DTV.” These stations must be operated in digital television mode.¹⁰ Those stations indicated in Attachment A as “NTSC” are single-channel stations that must be operated as either NTSC analog stations or, if they meet the Commission’s interference requirements, may be operated as digital only television stations.¹¹

a. Open Construction Permits

Pursuant to the policies established in the *Broadcast Competitive Bidding First Report and Order*, any interested party may apply for any of the ten “open” construction permits listed in Attachment A.¹² Long-form applications (FCC Forms 301) were filed previously for some of these open television station construction permits.¹³ The pending applications for these open construction permits also are listed in Attachment A.¹⁴ Those wishing to participate in the auction, including those entities designated in Attachment A with a pending long-form application for an open construction permit, must file a short-form application prior to the short-form deadline specified in this public notice.¹⁵

Any party filing for an open construction permit with a pending long-form application should understand that it is likely that its application will be mutually exclusive with the previously-filed application. Even if there is no pending long-form application for an open construction permit listed in Attachment A, short-form applications (FCC Forms 175) specifying the same open construction permit will be considered mutually exclusive.

In response to the *Auction No. 64 Comment Public Notice*, Humberto Lopez filed comments requesting that the construction permit for the new television station on Channel 31 at Victoria, Texas, be removed from the auction and that there be no opportunity to file a competing application against his pending application for station TV-NTS009-31.¹⁶ Mr. Lopez states that he is the licensee of station KVHM-LP, a

¹⁰ See 47 C.F.R. §§ 73.622-73.625.

¹¹ See 47 C.F.R. §§ 73.606-73.621.

¹² *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15920.

¹³ Please note that the construction permit designations provided in Attachments A and B of the *Auction 64 Comment Public Notice* have all been revised including the construction permit designations for channels NTSC 22+ and DTV 51 that were listed incorrectly in the previous Attachment A. The corrected construction permit designations are listed in Attachment A to this public notice to reflect TV-NTS005-22+ for the proposed station at Topeka, Kansas and TV-DTV010-51 for the proposed station at Medical Lake, Washington, respectively.

¹⁴ Pappas Telecasting of America filed a long-form application for a construction permit for a station at Derby, Kansas, File No. BNPCT-19960722AAA. This application was listed as accepted for filing in a 2004 public notice. *Broadcast Applications, Public Notice*, Report No. 25858 (MB Nov. 9, 2004). Attachment A of this public notice now lists Pappas Telecasting of America as a pending applicant for the television station construction permit at Derby, Kansas designated as TV-DTV004-46.

¹⁵ The Media Bureau will dismiss the pending long-form application (FCC Form 301) listed in Attachment A of this public notice of any applicant which fails to file a short-form application to participate in Auction No. 64 before the deadline specified in this public notice or which fails to submit a sufficient upfront payment before the deadline specified in this public notice.

¹⁶ Lopez Comments at 2-3.

Class A low power television (LPTV) station on Channel 31 at Victoria, Texas. Mr. Lopez is concerned that the Commission will be allowing other parties to file competing applications for a full power television station on Channel 31 at Victoria, Texas, and that “any such application will necessarily involve prohibitive electrical interference” to his Class A LPTV station.¹⁷ Mr. Lopez maintains that only his application for Victoria can be granted because the issue of interference to his Class A LPTV station can only be resolved with his consent.¹⁸ Mr. Lopez requests that his application for Channel 31 at Victoria, Texas, be withdrawn from the auction and granted outside of the auction process.¹⁹

Mr. Lopez essentially requests that the staff review the technical qualifications of all proposals for the new Victoria television stations prior to auction.²⁰ In the *Broadcast Competitive Bidding First Report and Order*, the Commission considered adopting such an approach.²¹ The Commission, however, rejected this approach and concluded that it would not “make any determination as to the acceptability or grantability of an applicant’s technical proposal prior to auction.”²² The Commission concluded that “deferring technical review until the post-auction submission of long-form applications by the winning bidders will minimize the potential for delay and will promote the deployment of new broadcasting service to the public....”²³ We will not, therefore, consider whether other proposals for a new Victoria television station would be technically qualified prior to the auction.

Moreover, we decline to remove the Victoria, Texas, construction permit from this auction based on speculation that a long-form application filed by a winning bidder may fail to protect from harmful interference the Class A low power television station (KVHM-LP) licensed to Mr. Lopez. After the close of competitive bidding, the winning bidder for the construction permit for TV-NTS009-31 at Victoria, Texas, if any, will be required to submit a long-form application (FCC Form 301) and demonstrate *inter alia* compliance with all of the technical rules concerning operation of a full-power television station. As part of its long-form application review, the staff will determine whether the winning bidder’s proposed facility would cause harmful interference to all relevant stations, including the Lopez Class A low power television station.²⁴ For this reason, we decline to remove from Auction No. 64 the construction permit for station TV-NTS009-31 at Victoria, Texas.

However, we take this opportunity to remind potential bidders to undertake appropriate due diligence, including engineering studies, site inspections, and other research, prior to participating in this auction to ensure that their desired facility may be implemented.²⁵

¹⁷ *Id.* Class A low power television stations are protected from harmful interference from new full-power analog and digital television stations and modifications proposed by existing full-power analog and digital television stations. See Establishment of a Class A Television Service, MM Docket No. 00-10, *Report and Order*, 15 FCC Rcd 6355 (2000).

¹⁸ Lopez Comments at 2.

¹⁹ *Id.* at 3.

²⁰ See 47 C.F.R. §§ 73.613 & 73.622.

²¹ *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15979-80.

²² *Id.* at 15980.

²³ *Id.*

²⁴ The Commission stated with regard to related circumstances in the *Broadcast Competitive Bidding First Bidding Report and Order*, a “comprehensive review of any applicant’s technical proposal will be undertaken by the staff only post-auction, and an applicant who becomes a winning bidder will be able to make changes to its technical proposal at that time.” *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15976 n.159.

²⁵ For additional guidance concerning due diligence, see Section I.B.3., *infra*.

b. Closed Construction Permit

Pursuant to the Congressional directive of Section 309(l)(3) of the Communications Act,²⁶ and procedures established by the Commission in the *Broadcast Competitive Bidding First Report and Order*,²⁷ competitive bidding for certain broadcast construction permits is “closed” or restricted to applications which meet designated criteria. Attachment A lists one closed construction permit, identified as TV-NTS011-51, which is the subject of pending, mutually exclusive applications for a new full power analog television station that were filed prior to July 1, 1997. Participation in competitive bidding for the TV-NTS011-51 construction permit will be limited to those applicants identified for the closed construction permit in Attachment A of this public notice.

To be eligible to participate in competitive bidding for any of the construction permits identified in Attachment A of this public notice, each interested party, including those individuals or entities with a pending long-form application listed in Attachment A, must submit before the January 20, 2006, deadline a complete and correct short-form application and otherwise comply with the deadlines and requirements outlined in this Public Notice.

In the *Auction No. 64 Comment Public Notice* released on September 23, 2005, the Bureaus required each of the nine specified auction applicants for this closed construction permit to submit its FCC registration number (FRN) before 5:00 p.m. Eastern Time (ET) on November 16, 2005.²⁸ The requirements for this FRN submission were specified in that public notice.²⁹ The *Auction No. 64 Comment Public Notice* explained that if one of the specified applicants failed to provide this information in the prescribed manner and before the deadline specified, its long-form application would be dismissed and it would no longer be eligible for competitive bidding for a construction permit for station TV-NTS011-51.³⁰ Four out of the nine specified applicants failed to submit the required FRN. Accordingly, the Video Division of the Media Bureau has dismissed the long-form applications (FCC Forms 301) for a construction permit for station TV-NTS011-51, on NTSC channel 51, at Jackson, Mississippi, of Fant Broadcasting Development, LLC, Natchez Trace Broadcasting Company, United Television, Inc., and Winstar Broadcasting Corp. A separate public notice announcing that action will be released shortly.

B. Rules and Disclaimers

1. Relevant Authority

Prospective applicants must familiarize themselves thoroughly with the Commission’s general competitive bidding rules, including recent amendments and clarifications.³¹ Broadcasters should also

²⁶ 47 U.S.C. § 309(l)(3).

²⁷ *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd 15920, 15950-51 ¶¶ 80-87.

²⁸ *See Auction No. 64 Comment Public Notice*, DA 05-2423 (Sept. 23, 2005).

²⁹ *Id.* at 2.

³⁰ *See, e.g.*, “Low Power Television Auction No. 81 Scheduled for September 14, 2005, Auction Inventory Revised,” 20 FCC Rcd 7878 (2005) (dismissing engineering proposals for low power television or television translator auction applicants that failed to submit timely a FRN).

³¹ *See, e.g.*, Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) (“*Fifth Report and Order*”); *id.*, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Seventh Report and Order*”); *id.*, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002); *id.*, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003).

familiarize themselves with the Commission's rules relating to the television broadcast service contained in 47 C.F.R. §§ 73.601–73.699 and 73.1001–73.4280. Prospective applicants also must be familiar with the rules relating to competitive bidding proceedings contained in 47 C.F.R. §§ 1.2001–1.2112 and broadcast auctions contained in 47 C.F.R. §§ 73.5000–73.5009. Prospective applicants also must be thoroughly familiar with the procedures, terms and conditions (collectively, “terms”) contained in this public notice, the *Auction No. 64 Comment Public Notice*, the *Broadcast Competitive Bidding First Report and Order*,³² the *Broadcast Competitive Bidding First Reconsideration Order*,³³ the *New Entrant Bidding Credit Reconsideration Order*,³⁴ and the *Noncommercial Educational Second Report and Order*.³⁵

The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of each applicant to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. ET Monday through Thursday or 8:00 a.m. to 11:30 a.m. on Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (“BCPI”), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 or <http://www.bcpiweb.com>.³⁶

2. Prohibition of Collusion

To ensure the competitiveness of the auction process, the Commission's Part 1 rules prohibit applicants competing for construction permits in the same geographic license area from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii).³⁷ Thus, applicants competing for construction permits in the same geographic license area must affirmatively avoid all communications with each other that affect or, in their reasonable assessment, have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the

³² See generally *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15920.

³³ See *Broadcast Competitive Bidding First Reconsideration Order*, 14 FCC Rcd at 8724.

³⁴ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234, *Memorandum Opinion and Order*, 14 FCC Rcd 12541 (1999) (“*New Entrant Bidding Credit Reconsideration Order*”).

³⁵ See Reexamination of the Comparative Standard for Noncommercial Educational Applicants, MM Docket No. 95-31, *Second Report and Order*, 18 FCC Rcd 6691 (2003) (“*NCE Second Report and Order*”), recons. pending.

³⁶ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, FCC 98-194 for the *Broadcast Competitive Bidding First Report and Order*, FCC 99-74 for the *Broadcast Competitive Bidding First Reconsideration Order*, and DA 05-2987 for this public notice).

³⁷ See 47 C.F.R. §§ 1.2105(a)(2)(viii); 1.2105(c)(1); see also 47 C.F.R. § 73.5002; *Seventh Report and Order*, 16 FCC Rcd 17546.

auction, which will be announced in a future public notice.³⁸ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**³⁹

In Auction No. 64, the rule would apply to applicants bidding for any of the same construction permits.⁴⁰ Therefore, two applicants that apply to bid for any one common television station construction permit would be precluded from engaging in prohibited communications during the period from the short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants select to bid on their short-form applications for only one common television station construction permit, they may not discuss with each other their bids or bidding strategies relating to any television station construction permit for which either applicant selected to bid on the applicant's short-form application.

For purposes of this prohibition, Section 1.2105(c)(7)(i) defines “applicant” as including all officers and directors of the entity submitting a short-form application to participate in the auction,⁴¹ all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.⁴²

Applicants competing for construction permits for any of the same television stations must not communicate indirectly about bids or bidding strategy.⁴³ Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants that the authorized bidder is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or engineering firm or consulting firm), a violation similarly could occur.⁴⁴ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.⁴⁵ Similarly, we note that a violation of the anti-collusion rule could occur in other contexts, such as, an individual serving as an officer for two or more competing applicants.⁴⁶

³⁸ 47 C.F.R. § 1.2105(c)(1).

³⁹ *See, e.g.*, Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626, 18628 ¶ 4, n.19 (Enf. Bur. 2004), *application for review pending* (collusion rule applies to “applicants” regardless of whether they are qualified to bid); Letter to Robert Pettit from Margaret W. Wiener, 16 FCC Rcd 10080 (WTB 2000) (declining to exempt an applicant’s controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

⁴⁰ *Id.*

⁴¹ *See, e.g.*, Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445 (Video and Auctions Divs. Sept. 13, 2005).

⁴² 47 C.F.R. § 1.2105(c)(7)(i).

⁴³ *Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

⁴⁴ *See* Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (Wireless Telecom. Bur. 1998).

⁴⁵ *Id.*

⁴⁶ *See, e.g.*, Letter to Colby M. May from Barbara A. Kreisman and Margaret W. Wiener, DA 05-2445 (Video and Auctions Divs. Sept. 13, 2005) (finding apparent violation of anti-collusion rule where applicants with mutually

The Commission's anti-collusion rules allow applicants in Auction No. 64 to form certain agreements during the auction, provided the applicants have not applied for any of the same construction permits. However, applicants may enter into bidding agreements **before** filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application.⁴⁷ If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations, discussions or communications with other applicants for construction permits for the same designated market.⁴⁸ By signing its short-form application, each applicant is certifying its compliance with Sections 1.2105(c) and 73.5002.

By electronically submitting its short-form application, each applicant certifies its compliance with Sections 1.2105(c) and 73.5002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.⁴⁹

In addition, Section 1.65 of the Commission's rules requires an applicant to **maintain** the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.⁵⁰ Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation.⁵¹ Applicants are therefore required by Section 1.65 to make such notification to the Commission immediately upon discovery. In addition, Section 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.⁵²

Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.⁵³ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁵⁴

exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

⁴⁷ See 47 C.F.R. § 1.2105(c)(7)(i).

⁴⁸ See "Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules," *Public Notice*, DA 95-2244, 11 FCC Rcd 9645 (1995).

⁴⁹ *Id.*, 13 FCC Rcd at 11978 ¶ 13.

⁵⁰ 47 C.F.R. § 1.65.

⁵¹ The Bureaus caution prospective applicants that any facsimile transmission received concerning the anti-collusion rules, whether a notification of a communication from an applicant or an applicant's agent or an allegation that some other individual or entity has violated the anti-collusion rules, will be attributed to an applicant in Auction No. 64 if the facsimile transmission originates from the premises of the applicant or any agent of the applicant or any individual or entity with privity to the applicant. It will be considered to be a material misrepresentation of fact to the Commission by the applicant if the facsimile, as received, fails to clearly and accurately identify the name of the Auction No. 64 applicant.

⁵² 47 C.F.R. § 1.2105(c)(6); see also *Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

⁵³ 47 C.F.R. § 1.2107(d).

⁵⁴ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

Applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁵⁵ Compliance with the disclosure requirements of the Commission's anti-collusion rule will not necessarily insulate a party from enforcement of the antitrust laws.⁵⁶ If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.⁵⁷

A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment F and these documents are available on the Commission's auction anti-collusion web page.⁵⁸

3. Due Diligence

Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 64 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in bidding in the auction. Participants in Auction No. 64 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

Potential bidders should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the

⁵⁵ In cases where specific instances of collusion in the competitive bidding process are alleged in the petition to deny process, the Commission may conduct an investigation or refer such matters to the United States Department of Justice for investigation. *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. *See also* "Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁵⁶ *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21588, 21590 ¶ 4 (1999); *see also* Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) ("[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws."); Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994).

⁵⁷ *See* 47 C.F.R. § 1.2109(d); *see also Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵⁸ <http://wireless.fcc.gov/auctions/anticollusion>

Commission may relate to particular applicants or incumbent construction permittees or incumbent licensees or the construction permits available in Auction No. 64. In addition, pending and future judicial proceedings may relate to particular applicants, incumbent construction permittees, or incumbent licensees, or the construction permits available in Auction No. 64. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific report and order amending the television and digital television Tables of Allotments and allotting the analog or digital television channel(s) on which they plan to bid.⁵⁹ Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the construction permit(s) on which they plan to bid.

Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for construction permits included in Auction No. 64. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the beginning of bidding in this auction.

Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 64. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations described in Section I.B.5 of this public notice.

Potential bidders for any new television facility in this auction should note that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

Potential bidders are reminded also that, in November of 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service.⁶⁰ In response to the enactment of the CBPA, in the *Class A Report and Order*, the Commission adopted rules to establish the new Class A television service, including rules to provide interference protection for eligible Class A television stations from new full power television stations.⁶¹ As required by this order, a winning bidder in Auction No. 64, upon submission of its long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate any full power television station proposed in this auction.

Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees, including information about the identity and location of Class A television stations. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data

⁵⁹ See 47 C.F.R. § 73.606.

⁶⁰ Pub.L.No. 106-113, 113 Stat. Appendix I at 1501A-594 – 598 (1999), codified at 47 U.S.C. § 336(f).

⁶¹ Establishment of a Class A Television Service, MM Docket No. 00-10, *Report and Order*, 15 FCC Rcd 6355 (2000). See discussion of requirements to protect qualified Class A television stations Section I.A.2., *supra*.

Base System (CDBS) and may be researched on the Internet at <http://www.fcc.gov/mb/>.⁶² Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the Help file. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418-2662, or via e-mail at mbinfo@fcc.gov.

The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

4. Bidder Alerts

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 64 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than \$25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 64 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

⁶² The Media Bureau's web page which is specific to Class A television stations is available at: <http://www.fcc.gov/mb/video/files/classa.html>.

5. National Environmental Policy Act Requirements

Construction permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act ("NEPA").⁶³ The construction of a broadcast facility is a federal action and the construction permittee must comply with the Commission's NEPA rules for each such facility.⁶⁴ The Commission's NEPA rules require, among other things, that the construction permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The construction permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The construction permittee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

1. Auction Date

Bidding in this auction will begin on Wednesday, March 15, 2006, as announced in the *Auction No. 64 Comment Public Notice*.⁶⁵ The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

2. Auction Title

Auction No. 64 – Full Power Television.

3. Bidding Methodology

The bidding methodology for Auction No. 64 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC's Integrated Spectrum Auction system ("ISAS" or "FCC Auction System"), and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.

4. Pre-Auction Dates and Deadlines

Auction Seminar	January 11, 2006
FCC Form 175 Filing Window Opens.....	January 11, 2006; 12:00 p.m. ET
FCC Form 175 Filing Window Deadline.....	January 20, 2006; 6:00 p.m. ET
Upfront Payments (via wire transfer).....	February 17, 2006; 6:00 p.m. ET
Mock Auction	March 13, 2006
Auction Begins.....	March 15, 2006

5. Requirements for Participation

Those wishing to participate in the auction must:

⁶³ 47 C.F.R. Part 1, Subpart I.

⁶⁴ 47 C.F.R. §§ 1.1305-1.1319.

⁶⁵ *Auction No. 64 Comment Public Notice*.

- Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), January 20, 2006, following the electronic filing procedures set forth in Attachment C to this public notice.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, February 17, 2006.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

6. General Contact Information

GENERAL AUCTION INFORMATION

General Auction Questions
Seminar Registration

FCC Auctions Hotline
(888) 225-5322, option two;
or (717) 338-2888
Hours of service: 8:00 a.m. – 5:30 p.m. ET,
Monday through Friday

AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division
(202) 418-0660

LICENSING INFORMATION

Rules, Policies, Regulations
Licensing Issues, Engineering Issues,
Due Diligence, Incumbency Issues

Video Division
(202) 418-1600

TECHNICAL SUPPORT

Electronic Filing
FCC Auction System

FCC Auctions Technical Support Hotline
(877) 480-3201, option nine; or (202) 414-1250
(202) 414-1255 (TTY)
Hours of service: 8:00 a.m. – 6:00 p.m. ET,
Monday through Friday

PAYMENT INFORMATION

Wire Transfers
Refunds

FCC Auctions Accounting Branch
(202) 418-0578
(202) 418-2843 (Fax)

AUCTION BIDDER LINE

Will be furnished only to qualified bidders

FCC COPY CONTRACTOR

Additional Copies of
Commission Documents

Best Copy and Printing, Inc
445 12th Street, SW, Room CY-B402
Washington, DC 20554
(800) 378-3160
<http://www.bcpiweb.com>

PRESS INFORMATION

Chelsea Fallon (202) 418-7991

FCC FORMS

(800) 418-3676 (outside Washington, DC)
(202) 418-3676 (in the Washington area)
<http://www.fcc.gov/formpage.html>

ACCESSIBLE FORMATS

Braille, large print, electronic files, or
audio format for people with disabilities

Consumer and Governmental Affairs Bureau
(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

FCC INTERNET SITES

<http://www.fcc.gov>
<http://wireless.fcc.gov/auctions>
<http://wireless.fcc.gov/uls>
<http://www.fcc.gov/mb>

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or construction permits.⁶⁶ The short-form application is the first part of the Commission's two-phased auction application process which contemplates that potential construction permittees or licensees file streamlined, short-form applications in which applicants certify under penalty of perjury as to their qualifications.⁶⁷ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications. In the second phase, winning bidders file a more comprehensive long-form application.⁶⁸

Entities seeking construction permits available in Auction No. 64 must file electronically via the FCC Auction System a short-form application before 6:00 p.m. ET on January 20, 2006, following the procedures prescribed in Attachment C to this public notice. For Auction No. 64, if an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submission of accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.⁶⁹ Applicants should read the instructions set forth in Attachment C to this public notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.⁷⁰

An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple short-form applications, such additional applications will be dismissed.

Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. New Entrant Bidding Credit

To fulfill its obligations under 47 U.S.C. § 309(j) and further its long-standing commitment to the diversification of broadcast facility ownership, the Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests.

⁶⁶ See 47 C.F.R. § 1.2105.

⁶⁷ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁶⁸ See 47 C.F.R. § 1.2105.

⁶⁹ See *id.*

⁷⁰ As discussed generally in *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, *Noncommercial Educational Second Report and Order*, 18 FCC Rcd 6691 (2003) ("*NCE Second Report and Order*"), the opening of a window for nonreserved vacant construction permits provides a filing opportunity for both noncommercial educational ("NCE") and commercial applicants. However, as discussed in Section III.C, *infra*, while non-mutually exclusive NCE applications will not be resolved through competitive bidding, any applications specifying NCE facilities that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing. 47 C.F.R. § 73.5002(b).

The interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications shall be considered when determining an auction applicant's eligibility for the New Entrant Bidding Credit.⁷¹ The applicant's attributable interests shall be determined as of the short-form application (FCC Form 175) filing deadline, January 20, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Any applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline, January 20, 2006.⁷² Prospective applicants are reminded, however, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in an applicant include:

- all officers and directors of a corporate applicant;
- any owner of 5 percent or more of the voting stock of a corporate applicant;
- all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and
- all members of a limited liability company, unless sufficiently insulated.⁷³

In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the applicant. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant.⁷⁴ Applicants should note that the mass media attribution rules were revised in 1999.⁷⁵

Applicants also are reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that auction applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.⁷⁶

⁷¹ "Media of mass communication" include both commercial and NCE full-power broadcast stations.

⁷² The fact that, on January 20, 2006, a bidder has a pending or granted application to assign or transfer control of a media interest shall not be sufficient to avoid attribution. To avoid attribution, an applicant or its attributable interest holders must have consummated the transaction by January 20, 2006. Thus, an applicant could not qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form filing application deadline. See *Liberty Productions, a Limited Partnership, Memorandum Opinion and Order*, 16 FCC Rcd 12061, stay denied, 16 FCC Rcd 18966 (2001), *aff'd sub nom, Biltmore Forest Broadcasting FM, Inc. v. F.C.C.*, 321 F.3d 155 (D.C. Cir.), cert. denied, 540 U.S. 981 (2003) ("*Liberty Productions*").

⁷³ See 47 C.F.R. § 73.3555 Note 2.

⁷⁴ See *Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992).

⁷⁵ See *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order*, MM Docket No. 94-150, 14 FCC Rcd 12559 (1999) (prior history omitted).

⁷⁶ See 47 C.F.R. § 73.5008(c).

Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules.⁷⁷ However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the winning bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit.⁷⁸ A medium of mass communications is defined in 47 C.F.R. § 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among “media of mass communications” as defined in Section 73.5008(b).⁷⁹

B. Application Requirements

In addition to the ownership information required pursuant to 47 C.F.R. §§ 1.2105 and 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit.⁸⁰ In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant’s short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.⁸¹

1. Bidding Credits

Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule,⁸² are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 C.F.R. § 73.5008;
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 C.F.R. § 73.5008; and

⁷⁷ Further, *any* applicant asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit. 47 C.F.R. § 73.5007. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock or equivalent level of interest in cases where the bidder is not a corporate entity. *De facto* control is determined on a case-by-case basis.

⁷⁸ *Broadcast Reconsideration Order*, 14 FCC Rcd at 8764 ¶ 75; 47 C.F.R. § 73.5007.

⁷⁹ See *Minnesota Christian Broadcasters, Inc.*, 18 FCC Rcd 614 (2003), *aff'd sub nom. Carol DeLaHunt v. FCC*, No. 03-1029, slip op. (D.C. Cir. Feb. 4, 2004) (unreported opinion available at 88 Fed.Appx. 418 (D.C. Cir.); *aff'd sub nom. Minnesota Christian Broadcasters, Inc. v. FCC*, 411 F.3d 283 (D.C. Cir 2005).

⁸⁰ See 47 C.F.R. §§ 1.2105(a), 73.3555 and Note 2, 73.5007, 73.5008.

⁸¹ See 47 C.F.R. §§ 73.5007, 73.5008.

⁸² See 47 C.F.R. § 73.5007.

- No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 C.F.R. § 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 C.F.R. § 73.3555 and Note 2 of that section.⁸³

2. Unjust Enrichment

Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.⁸⁴

C. Permit Selection

There is no opportunity to change construction permit selection after the short-form filing deadline.⁸⁵ It is critically important that each applicant confirms its construction permit selection because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its short-form application.⁸⁶ In addition, prospective applicants should note that participation in competitive bidding for a construction permit for station TV-NTS011-51 (closed permit) will be limited to those applicants identified under the “closed” construction permit in Attachment A, provided such parties submit an acceptable short-form application pursuant to the Commission’s rules and procedures described in this public notice.

D. Consortia and Joint Bidding Arrangements

Applicants will be required to indicate on their applications whether they have entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid.⁸⁷ Applicants also will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure.⁸⁸ If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing

⁸³ See 47 C.F.R. § 73.5008.

⁸⁴ See 47 C.F.R. § 73.5007(c).

⁸⁵ 47 C.F.R. § 1.2105(b)(2).

⁸⁶ To be eligible to participate in competitive bidding for one or more of the construction permits identified in Attachment A of this public notice, each applicant, including those individuals or entities with a pending long-form application listed under “open” construction permits or designated for the “closed” construction permit for station TV-NTS011-51 in Attachment A, must submit before the deadline specified in this public notice a complete and correct short-form application which demonstrates its qualifications to participate in competitive bidding, each applicant must select correctly one or more construction permits, and each applicant must remit a sufficient upfront payment before the deadline specified in this public notice. In particular, certain specified applicants must select the construction permit for station TV-NTS011-51.

⁸⁷ 47 C.F.R. § 1.2105(a)(2)(ix).

⁸⁸ 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants for the same construction permit after the deadline.⁸⁹

A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same market provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.⁹⁰ While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.⁹¹ Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

E. Ownership Disclosure Requirements

The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply.⁹² Therefore, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short-form application are prescribed in Sections 1.2105 and 1.2112 of the Commission's rules.⁹³ Each applicant is responsible for information submitted in its short-form application being complete and accurate.

To simplify filling out its short-form application, an applicant's most current ownership information on file with the Commission in an electronic format compatible with the short-form application (FCC Form 175), such as information submitted in an on-line FCC Form 602 in connection with wireless services or in a short-form application (FCC Form 175) filed for a previous auction, will be entered automatically into the applicant's short-form application for Auction No. 64. An applicant should review carefully any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that needs to be changed directly in the short-form application.

⁸⁹ See above Section I.B.2.

⁹⁰ 47 C.F.R. § 1.2105(c)(4)(i), (ii).

⁹¹ See, e.g., Todd Stuart Noordyk, *Memorandum Opinion and Order*, 16 FCC Rcd 18113, 18117 (2001); see also *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 467 (1997).

⁹² *Broadcast Competitive Bidding First Report and Order*, 13 FCC Rcd at 15976.

⁹³ Section 73.5002 of the Commission's rules specifies the bidding procedures, certification requirements and the anti-collusion rules applicable to mutually exclusive applications for commercial broadcast services subject to auction. Subsection (b) of that rule requires the timely submission of short form applications, along with the required certifications, information and exhibits, pursuant to the provisions of 47 C.F.R. § 1.2105(a) and any Commission public notices. 47 C.F.R. § 1.2105 *inter alia* requires the disclosure on the short-form application of the applicant's ownership information as specified in 47 C.F.R. § 1.2112.

F. Provisions Regarding Former and Current Defaulters

Each applicant in Auction No. 64 must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates,⁹⁴ its controlling interests, or any affiliate of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.⁹⁵ In addition, each applicant must certify under penalty of perjury on its short-form application that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110, as of the filing deadline for applications to participate in a specific auction, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency.⁹⁶ Prospective applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

“Former defaulters” — *i.e.*, applicants, including any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, that in the past have defaulted on any Commission construction permits or licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies — are eligible to bid in Auction No. 64, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.⁹⁷

In contrast, an applicant is not eligible to participate in competitive bidding in Auction No. 64 if the applicant, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction.⁹⁸

Applicants are encouraged to review the Wireless Telecommunications Bureau’s previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process.⁹⁹ For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for

⁹⁴ Affiliates and controlling interests are defined at 47 C.F.R. § 1.2110.

⁹⁵ 47 C.F.R. § 1.2105(a)(2)(xi); Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293, 15317 ¶ 42 and n. 142 (modified by Erratum, DA 00-2475 (WTB Nov. 3, 2000)) (“*Fifth Report and Order*”).

⁹⁶ 47 C.F.R. § 1.2105(a)(2)(x); *Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42.

⁹⁷ 47 C.F.R. §§ 1.2105(a)(2)(xi) and 1.2106(a). See discussion at Section III.D.3.

⁹⁸ 47 C.F.R. § 1.2105(a)(2)(x); see *Fifth Report and Order*, 15 FCC Rcd at 15317 ¶ 42 and n. 142 (“If any one of an applicant’s controlling interests or their affiliates...is in default on any [construction permit or] Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files it[s] Form 175, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x)...and will not be eligible to participate in Commission auctions.”).

⁹⁹ See “Wireless Telecommunications Bureau Reminds Prospective Broadband PCS Spectrum Auction Applicants of Default and Delinquency Disclosure Requirements,” *Public Notice*, 19 FCC Rcd 21920 (Wireless Telecom. Bur. 2004) (“*Auction Default Disclosure Public Notice*”). This public notice may be found at <http://wireless.fcc.gov/auctions/58/>.

purposes of Sections 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline.¹⁰⁰ Therefore, with respect to regulatory or application fees, the sanctions Sections 1.2105(a) and 1.2106(a) impose with respect to competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.¹⁰¹

The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States.¹⁰² Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules "are not affected" by the red light rule.¹⁰³ As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of Sections 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 C.F.R. § 1.2105.¹⁰⁴ Thus, while the red light rule may ultimately prevent the processing of long-form applications by auction winners, an auction applicant's "red light" status is not necessarily determinative of its eligibility to participate in this auction or to its upfront payment obligation.

Prospective applicants in Auction No. 64 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule,¹⁰⁵ and such review may result in the dismissal of a winning bidder's long-form application.¹⁰⁶

¹⁰⁰ See Letter to Cheryl A. Tritt, Esq. from Margaret Wiener, Chief, Auctions and Spectrum Access Division, WTB, 19 FCC Rcd 22907 (WTB 2004) (clarifying the term "debt" or "non-tax debt" as referenced in 47 C.F.R. §§ 1.2105(a) and 1.2106(a)). This letter may be found at <http://wireless.fcc.gov/auctions/58/>.

¹⁰¹ Even where Commission rules expressly enable late payment, subject to payment of an additional late fee, and do not impose a final payment deadline, the Commission may in some cases issue a demand for payment by a date certain. See 47 C.F.R. § 1.1164(a). Failure to comply with the terms of a particular demand letter in the time period provided may render the subject debt delinquent, notwithstanding rules generally permitting late payment.

¹⁰² Amendment of Part 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)).

¹⁰³ *Id.*, 19 FCC Rcd at 6541 n.11. Footnote 11 specifically mentions 47 C.F.R. § 1.2105(a)(2)(x) and (xi).

¹⁰⁴ See *Auction Default Disclosure Public Notice*, 19 FCC Rcd at 21920 (addressing relationship between Commission's Red Light Display System and Form 175 default and delinquency disclosure requirements for auction applicants).

¹⁰⁵ See Amendment of Part 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, MD Docket No. 02-339, *Report and Order*, 19 FCC Rcd 6540 (2004) (implementing Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996)). See also 47 C.F.R. § 1.1112.

¹⁰⁶ Applicants that have their long-form applications dismissed will be deemed to have defaulted and will be subject to default payments under 47 C.F.R. §§ 1.2104(g) and 1.2109(c).

G. Other Information

Applicants owned by minorities or women, as defined in Section 1.2110(c)(2), may identify themselves in filling out their short-form applications regarding this status.¹⁰⁷ This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of “designated entities” in its auctions.

H. Minor Modifications to Short-Form Applications (FCC Forms 175)

Following the deadline for filing short-form applications (FCC Forms 175) on **January 20, 2006**, applicants in Auction No. 64 are permitted to make only minor changes to their applications. Applicants are not permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as a noncommercial educational entity).¹⁰⁸ Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

Any application amendment and related statements of fact must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹⁰⁹

An applicant must make permissible minor changes to its short-form application (FCC Form 175), as defined by Section 1.2105(b), on-line. Applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

In addition, applicants must submit a letter, briefly summarizing the changes by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auction64@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 64 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe[®] Acrobat[®] (pdf) or Microsoft[®] Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

I. Maintaining the Accuracy of Short-Form Application Information

Section 1.65 of the Commission’s rules requires each applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.¹¹⁰ Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit must be reported immediately.¹¹¹

¹⁰⁷ 47 C.F.R. § 1.2110(c)(2).

¹⁰⁸ See 47 C.F.R. § 1.2105.

¹⁰⁹ See 47 C.F.R. § 1.917.

¹¹⁰ 47 C.F.R. § 1.65.

¹¹¹ For example, if ownership changes result in the attribution of new interest holders that affect the applicant’s qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant’s notification. See *Liberty Productions*, 16 FCC Rcd at 12078.

If an amendment reporting substantial changes is a “major amendment” as defined by 47 C.F.R. § 1.2105, the major amendment will not be accepted and may result in the dismissal of the short-form application.¹¹²

Applicants must report Section 1.65 modifications to their FCC Form 175 by electronic mail and submit a letter briefly summarizing the changes to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: auCTION64@fcc.gov. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 64 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about other changes should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418-0660.

It is possible for an applicant to make certain minor changes to its short-form application (FCC Form 175), such as a change of applicant address or contact information, on-line at any time after the initial short-form application deadline. Applicants must click on the SUBMIT button in the FCC Auction System for such changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

III. PRE-AUCTION PROCEDURES

A. Auction Seminar — January 11, 2006

On Wednesday, January 11, 2006, the FCC will sponsor a seminar for parties interested in participating in Auction No. 64 at the Federal Communications Commission headquarters, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing the FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the full power television broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

To register, complete the registration form attached hereto as Attachment B and submit it by **Monday, January 9, 2006**. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

For individuals who are unable to attend, an Audio/Video of this seminar will be available via webcast from the FCC’s Auction 64 web page at <http://wireless.fcc.gov/auctions/64/>. Select the “Auction Seminar” link.

B. Short-Form Application (FCC Form 175) — Due before 6:00 p.m. ET on January 20, 2006

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System.¹¹³ This application must be submitted electronically and received at the Commission prior to 6:00 p.m. ET on January 20, 2006. **Late applications will not be accepted.** There is no application fee required when filing FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Section III.D, *below*.

Applications generally may be filed at any time beginning at noon ET on January 11, 2006, until 6:00 p.m. ET on January 20, 2006. Applicants are strongly encouraged to file early and are responsible for

¹¹² See 47 C.F.R. § 1.2105(b)(2).

¹¹³ 47 C.F.R. § 1.2105(a).

allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on January 20, 2006.

Applicants must always click on the **SUBMIT** button on the *Certify and Submit* screen of the electronic form to successfully submit their FCC Forms 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C. Technical support is available at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

C. Application Processing and Minor Corrections

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting such corrected applications.

Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in the subsequent public notice.¹¹⁴ All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction.¹¹⁵ In the *NCE Second Report and Order*, the Commission held that applications for non-commercial educational full power television stations on non-reserved spectrum, filed during a television filing window, will be returned as unacceptable for filing if mutually exclusive with any application for a commercial station.¹¹⁶ Accordingly, if an FCC Form 175 filed during the Auction No. 64 filing window identifying the applicant as noncommercial educational is mutually exclusive with any application filed during that window by an applicant for a commercial station, the former will be returned as unacceptable for filing.¹¹⁷

As described more fully in the Commission's rules, after the short-form filing deadline on January 20, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as NCE).¹¹⁸

D. Upfront Payments — Due February 17, 2006

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon

¹¹⁴ 47 C.F.R. § 73.3573(f)(4).

¹¹⁵ In the *NCE Second Report and Order*, the Commission determined that short-form applicants that do not identify themselves on their FCC Form 175 as "noncommercial educational" will be considered as a matter of law, applicants for commercial broadcast stations. *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

¹¹⁶ *Id.* at 6699-6701. *See also* 47 C.F.R. § 73.5002(b).

¹¹⁷ *NCE Second Report and Order*, 18 FCC Rcd at 6699-6701. *See also* 47 C.F.R. § 73.5002(b).

¹¹⁸ 47 C.F.R. § 1.2105; *see* Two Way Radio of Carolina, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 12035 (1999). *See also* *NCE Second Report and Order*, 18 FCC Rcd at 6700 ¶ 22.

Bank in Pittsburgh, PA. **All upfront payments must be received in the proper account at Mellon Bank before 6:00 p.m. ET on February 17, 2006.**

1. Making Auction Payments by Wire Transfer

Wire transfer payments must be received before 6:00 p.m. ET on February 17, 2006. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
500 Ross St.
Pittsburgh, PA 15262
BENEFICIARY: FCC/Account # 910-1211
Originating Bank Information (OBI Field): (Skip one space between each information item)
“AUCTIONPAY”
APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A64U)
FCC CODE 1 (same as FCC Form 159, block 28A: “64”)
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358435

NOTE: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209-6045. On the cover sheet of the facsimile, write “Wire Transfer — Auction Payment for Auction No. 64.” In order to meet the Commission’s upfront payment deadline, an applicant’s payment must be credited to the Commission’s account before the deadline.¹¹⁹ **Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.**

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 64 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the specified deadline on February 17, 2006, will result in dismissal of the application and disqualification from participation in the auction.

¹¹⁹ See Letter to Patrick Shannon, Counsel for Lynch 3G Communications Corp., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, 18 FCC Rcd 11552 (WTB 2003).

2. FCC Form 159

A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D to this public notice. An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

3. Amount of Upfront Payment

In the *Part 1 Order*, the Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction.¹²⁰ In the *Fifth Report and Order*, the Commission specified that an applicant be required to make upfront payments 50 percent greater than the amount set for each construction permit or license if the applicant ever has been in default on any Commission construction permit or license or ever has been delinquent on any non-tax debt owed to any Federal agency.¹²¹ For purposes of this calculation, the “applicant” includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by Section 1.2110 of the Commission’s rules.¹²²

In the *Auction No. 64 Comment Public Notice*, we proposed that the amount of the upfront payment would determine a bidder’s initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids.¹²³ In order to bid on a construction permit, otherwise qualified bidders that applied for that construction permit on FCC Form 175 must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant’s total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits selected on its FCC Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits for which the applicant has applied on FCC Form 175, but rather to cover the number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time.¹²⁴

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed upfront payments for each construction permit taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum. The specific upfront payment and bidding units for each construction permit are specified in Attachment A of this public notice.¹²⁵

¹²⁰ Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697-98 ¶ 16 (1997) (“*Part 1 Order*”).

¹²¹ *Fifth Report and Order*, 15 FCC Rcd at 15316-17 ¶¶ 40-42; 47 C.F.R. § 1.2106(a); see 47 C.F.R. § 1.2105(a)(2)(xi).

¹²² 47 C.F.R. § 1.2110(b).

¹²³ *Auction No. 64 Comment Public Notice* at 4.

¹²⁴ Provisionally winning bids are bids that would become winning bids if the auction were to close after the given round. (See below Section IV.B.4).

¹²⁵ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active on (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder’s eligibility after the upfront payment deadline.**

Example: Upfront Payments and Bidding Flexibility				
Construction Permit	Channel	Location	Bidding Units	Upfront Payment
TV-NTS006-27	NTSC 27	Duluth, MN	100,000	100,000
TV-NTS008-51	NTSC 51	Bend, OR	80,000	80,000

If a bidder wishes to bid on both construction permits in a round, it must have selected both on its FCC Form 175 and purchased at least 180,000 bidding units (100,000 + 80,000). If a bidder only wishes to bid on one, but not both, purchasing 100,000 bidding units would meet the requirement for either construction permit. The bidder would be able to bid on either construction permit, **but not both at the same time**. If the bidder purchased only 80,000 bidding units, it would have enough eligibility for the Bend, Oregon, construction permit, but not for the Duluth, Minnesota, construction permit.

Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units on which they wish to be active by 1.5.¹²⁶ In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits for which the applicant has applied on its FCC Form 175, the applicant will not be eligible to participate in the auction.

4. Applicant’s Wire Transfer Information for Purposes of Refunds of Upfront Payments

The Commission will use wire transfers for all Auction No. 64 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions also can be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418-2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418-0578.

¹²⁶ 47 C.F.R. § 1.2106(a).

Name of Bank
ABA Number
Address of Bank
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number (see below)
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.¹²⁷) Eligibility for refunds is discussed in Section V.E., *below*.

E. Auction Registration

Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. **The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID cards that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.**

Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, March 9, 2006, should call (717) 338-2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

In the event that SecurID cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material. Qualified bidders requiring the replacement of these items must call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

F. Remote Electronic Bidding

The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding preference – electronic or telephonic – on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 64.

¹²⁷ 47 C.F.R. §1.1910.

Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is closed.

G. Mock Auction — March 13, 2006

All qualified bidders will be eligible to participate in a mock auction on Monday, March 13, 2006. The mock auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. AUCTION EVENT

The first round of bidding for Auction No. 64 will begin on Wednesday, March 15, 2006. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

1. Simultaneous Multiple Round Auction

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed to award all construction permits in Auction No. 64 in a simultaneous multiple round auction.¹²⁸ The Bureaus received no comments on this issue. The Bureaus decide that it is operationally feasible and appropriate to auction these full power television broadcast station construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted from eligible qualified bidders on all construction permits in each round of the auction.

2. Eligibility and Activity Rules

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.¹²⁹ The Bureaus received no comments on this issue.

For Auction No. 64, the Bureaus adopt this proposal. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits selected on its FCC Form 175 as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. **The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.**

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before

¹²⁸ *Auction No. 64 Comment Public Notice* at 3.

¹²⁹ *Id.* at 4.

participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. In Auction No. 64, a bidder will be considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bid Amounts" in Section IV.B.3.a., *below*). The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Section IV.A.3 and "Stage Transitions" in Section IV.A.4, *below*), the Bureaus adopt them for Auction No. 64.

3. Auction Stages

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed to conduct the auction in two stages and employ an activity rule. The Bureaus further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on construction permits representing at least 75 percent of its current bidding eligibility.¹³⁰ Finally, we proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. The Bureaus received no comments on this issue. The Bureaus adopt their proposals for the activity rules and stages. Below are the activity levels for each stage of the auction. The Bureaus reserve the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 75 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by four-thirds (4/3).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding unless an activity rule waiver is used. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

CAUTION: Since activity requirements increase in Stage Two, bidders must carefully check their activity during the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by either logging in to the FCC Auction System or by accessing the bidder summaries on the public results page.

Because the foregoing procedures have proven successful in maintaining the proper pace in previous auctions, the Bureaus adopt them for Auction No. 64.

¹³⁰ *Id.* at 4-5.

4. Stage Transitions

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or lower for three consecutive rounds of bidding. The Bureaus further proposed that the Bureaus would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureaus proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.¹³¹ The Bureaus received no comments on this issue.

The Bureaus adopt this proposal. Thus, the auction will start in Stage One and will generally advance to Stage Two when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids,¹³² the number of new bids, and the percentage increase in revenue. The Bureaus believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 64.

5. Activity Rule Waivers and Reducing Eligibility

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction.¹³³ The Bureaus received no comments on this issue. The Bureaus adopt the proposal that each bidder be provided three activity rule waivers.

Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (known as a "proactive waiver") or applied automatically by the FCC Auction System (known as an "automatic waiver") and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round. The Bureaus are satisfied that the practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the eligibility will be

¹³¹ *Id.* at 4-5.

¹³² When monitoring activity for determining when to change stages, the Bureaus may consider the percentage of bidding units of the construction permits receiving new provisionally winning bids, excluding any FCC-held construction permits.

¹³³ *Auction No. 64 Comment Public Notice* at 6.

permanently reduced, possibly curtailing the bidder's ability to bid on some construction permit(s) or eliminating the bidder from further bidding in the auction.

A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see Section IV.A.3 above). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity waiver (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids will not keep the auction open. **Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.**

6. Auction Stopping Rules

For Auction No. 64, the Bureaus proposed to employ a simultaneous stopping rule approach.¹³⁴ The Bureaus also sought comment on a modified version of the simultaneous stopping rule. In Auction No. 64, the modified version of the stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

The Bureaus further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

In addition, we proposed that the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

The Bureaus proposed to exercise these options only in certain circumstances, such as, where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.¹³⁵ Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

The Bureaus received no comments on the proposals about stopping rules. The Bureaus believe that these stopping rules are most appropriate for Auction No. 64, because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. The Bureaus adopt the stopping rules as proposed. Auction No. 64 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule.

¹³⁴ *Id.* at 9.

¹³⁵ *Id.* at 9.

7. Auction Delay, Suspension, or Cancellation

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.¹³⁶ The Bureaus received no comments on this issue.

Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopt the proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

1. Round Structure

The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

2. Reserve Price or Minimum Opening Bid

Section 309(j) of the Communications Act of 1934, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when applications for FCC licenses or construction permits are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest.¹³⁷ Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.¹³⁸ Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact

¹³⁶ *Id.* at 6.

¹³⁷ 47 U.S.C. § 309(j)(4)(F).

¹³⁸ See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 375, 455-456 ¶ 141 (1997) (“*Third Report and Order*”).

on the spectrum being auctioned.¹³⁹ The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.¹⁴⁰ This is consistent with policy applied in earlier spectrum auctions, including Auction Nos. 25, 27, and 54 (Closed Broadcast); Auction No. 32 (AM Broadcast); and Auction No. 37 (FM Broadcast).

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 64, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction.¹⁴¹ Specifically, a minimum opening bid was proposed for each construction permit listed in Attachments A and B of the *Auction 64 Comment Public Notice*. The minimum opening bid was determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed full power television broadcast facility, industry cash flow data, and recent broadcast transactions. Based on our experience in using minimum opening bids in other auctions, we believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits.¹⁴²

In the alternative, the Bureaus sought comment on whether, consistent with the Section 309(j), the public interest would be served by having no minimum opening bid or reserve price.¹⁴³

The Bureaus received no comments on this issue. We believe that the proposed minimum bid amounts are appropriate, and we adopt our proposed amounts. The minimum opening bid amounts we adopt for Auction No. 64 are reducible at the discretion of the Bureaus. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain requests to reduce the minimum opening bid amount on specific construction permits.

The specific minimum opening bid amounts for each construction permit available in Auction No. 64 are specified in Attachment A of this public notice.¹⁴⁴

3. Bid Amounts

In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts.¹⁴⁵ The FCC Auction System will list the nine bid amounts for each construction permit.¹⁴⁶ The nine bid amounts for each construction permit consist of the

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Auction No. 64 Comment Public Notice* at 7.

¹⁴² See 47 U.S.C. 309(j)(3)(C).

¹⁴³ *Auction No. 64 Comment Public Notice* at 7.

¹⁴⁴ Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

¹⁴⁵ Bidders must have sufficient eligibility to place a bid on the particular license. See *supra* Section III.D.3 “Amount of Upfront Payment.”

¹⁴⁶ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

minimum acceptable bid amount calculated using a smoothing formula and additional amounts calculated using a bid increment percentage.

a. Minimum Acceptable Bid Amounts

In the *Auction No. 64 Comment Public Notice*, we proposed that the minimum acceptable bid amount for a construction permit would be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit would be equal to the amount of the provisionally winning bid plus an additional amount calculated using a smoothing formula.¹⁴⁷ We further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increment amounts if circumstances so dictated.¹⁴⁸ We received no comment on this issue. We believe these proposals are appropriate for Auction No. 64, and we adopt our proposals.

The smoothing formula calculates minimum acceptable bid amounts by first calculating a **percentage increment**. The percentage increment for each construction permit is a function of bidding activity on that construction permit in prior rounds; therefore, a construction permit that has received many bids will have a higher percentage increment than a construction permit that has received few bids. This allows the minimum acceptable bid amounts to be tailored to the activity on a construction permit, decreasing the number of rounds it takes for construction permits receiving many bids to reach their final prices. Smoothing formula equations and examples are shown in Attachment E.

The calculation of the percentage increment used to determine the minimum acceptable bid amounts for each construction permit for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round.¹⁴⁹ The current activity index is equal to a weighting factor times the number of bidders that submit bids on the construction permit in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. We proposed to initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the construction permit. We will round the result using our standard rounding procedures.¹⁵⁰

The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus an additional amount. Using the smoothing formula, the FCC Auction System will calculate a **percentage increment** at the end of each round to determine the minimum acceptable bid amount for each construction permit for the next round.

¹⁴⁷ *Auction No. 64 Comment Public Notice* at 8-9.

¹⁴⁸ *Auction No. 64 Comment Public Notice* at 9.

¹⁴⁹ For Round 1 calculations, because there is no prior round (*i.e.*, no round 0), the activity index from the prior round is set at 0.

¹⁵⁰ Results are rounded using our standard rounding procedures: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

b. Additional Bid Amounts

The acceptable bid amounts in addition to the minimum acceptable bid amount for each construction permit are calculated using a **bid increment percentage**. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded — *e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc. We will begin the auction with a bid increment percentage of 10 percent.

The Bureaus retain the discretion to change the minimum acceptable bid amounts, the smoothing formula parameters, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System. The Bureaus also may use their discretion to change the minimum acceptable bid amounts, the smoothing formula parameters, and the bid increment percentage without prior notice if circumstances warrant.

4. Provisionally Winning Bids

At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.¹⁵¹

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids).¹⁵² No comments were received on this proposal. Therefore, the Bureaus adopt their proposal. A pseudo-random number generator based on the L’Ecuyer algorithms will be used to assign a random number to each bid.¹⁵³ The tied bid having the highest random number will become the provisionally winning bid. Eligible bidders, including the provisionally winning bidder, will be able to submit a higher bid in a subsequent round. In Auction No. 64, if no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the construction permit. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid will once again be determined based on the highest bid amount received for the construction permit.

5. Bidding

During a round in Auction No. 64, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), remove bids placed in the current bidding round, or permanently reduce eligibility. In Auction No. 64, bidders also have the option of submitting and removing multiple bids

¹⁵¹ See *supra* Section IV.A.2.

¹⁵² *Auction No. 64 Comment Public Notice* at 9.

¹⁵³ A description of the L’Ecuyer algorithms can be found in L’Ecuyer, P. (1999) “Good Parameters and Implementations for Combined Multiple Recursive Random Number Generators” *Operations Research* 47 (1), pp.159-164. A longer version of this paper and the C code for the algorithms can be found on the author’s website at <http://www.iro.umontreal.ca/~lecuyer/papers.html>.

during a round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders in Auction No. 64 should note that the bidding units associated with construction permits for which the bidder has removed its bid do not count towards the bidder's current activity.

All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 64. Please note that telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a telephonic bid submission.

A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits for which the applicant applied in its FCC Form 175 and (2) the bidder's upfront payment amount. The bid submission screens will allow bidders to submit bids only on those construction permits for which the bidder applied on its FCC Form 175.

In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode generated by the SecurID card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a "round summary" for each round after they have completed all of their activity for that round.

In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts.¹⁵⁴ For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box.¹⁵⁵ Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an "upload" function that allows bidders to upload text files containing bid information.

Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there is a provisionally winning bid on a construction permit, the FCC Auction System will calculate a minimum acceptable bid amount for that construction permit for the following round, as described in Section IV.B.3.

Finally, bidders are cautioned to select their bid amounts carefully because, as explained in a subsequent section, **no withdrawals will be allowed in Auction No. 64**, even if a bid was mistakenly or erroneously made.

6. Bid Removal

In the *Auction No. 64 Comment Public Notice*, the Bureaus proposed a bid removal procedure.¹⁵⁶ The Bureaus received no comments regarding the bid removal proposal. The Bureaus adopt their proposal. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bids" function in the FCC Auction System, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. After a round closes, a bidder may no longer remove a bid. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction, and therefore we adopt them for Auction No. 64.

¹⁵⁴ Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See supra* Section III.D.3 "Amount of Upfront Payment."

¹⁵⁵ In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

¹⁵⁶ *Auction No. 64 Comment Public Notice* at 9-10.

7. Bid Withdrawal

In the *Auction No. 64 Comment Public Notice*, the Bureaus solicited comment on two alternatives for bid withdrawal in this auction.¹⁵⁷ The Bureaus first proposed limiting each bidder to withdrawals in no more than one round during the course of the auction, with selection of the one round in which withdrawals could be used would be at each bidder's discretion. In the alternative, the Bureaus also invited comment on not permitting the withdrawal of bids following the close of a bidding round in Auction No. 64. No comments were received on either approach.

Based on our experience in prior auctions, we conclude that, for Auction No. 64, bidders should not be permitted to withdraw any bid after the close of the round in which the bid was submitted. The Commission has recognized that bid withdrawals may be an important tool to help bidders avoid incomplete aggregations of licenses and pursue efficient backup strategies as information becomes available during the course of an auction.¹⁵⁸ In Auction No. 64, however, we believe that the small number of construction permits in the auction inventory and the nature of the permits being offered suggest that bidders are unlikely to face significant risks if they are unable to secure various construction permits in combination. Moreover, in previous auctions, we have observed instances in which bid withdrawals arguably may have been used for strategic, anti-competitive purposes. . While we continue to recognize that bid withdrawals may play an important role in an auction, we note that bid withdrawals have not been available in several previous auctions, including certain auctions of broadcast permits.¹⁵⁹

V. POST-AUCTION PROCEDURES

A. Down Payments

After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, and final payments due.

Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 64 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

Absent a change to the existing payment rules applicable to broadcast permits won at auction, if a winning bidder's long-form application is uncontested, after the termination of the pleading cycle for petitions to deny, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application.¹⁶⁰ If a petition to deny is filed within the pleading cycle for petitions to deny, and if the petition to deny is dismissed or denied, the Commission will issue a public

¹⁵⁷ *Id.*

¹⁵⁸ *Third Report and Order*, 13 FCC Rcd at 459-60 ¶ 150.

¹⁵⁹ Bidders were not permitted to withdraw bids after the close of a bidding round in Auction No. 32 (Broadcast), Auction No. 38 (700 MHz Guard Band), Auction No. 46 (1670-1675 MHz Band), and Auction No. 54 (Broadcast).

¹⁶⁰ *See* 47 C.F.R. § 73.5006. The Commission is currently considering a proposal to standardize auction payment rules by conforming rules applicable to broadcast construction permits won at auction to the final payment procedures in section 1.2109(a). *See* Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Declaratory Ruling and Notice of Proposed Rule Making*, 20 FCC Rcd 11268 (2005).

notice announcing that it is prepared to grant the winning bidder's long-form application promptly after the Media Bureau disposes of any such petition to deny and is otherwise satisfied that the applicant is qualified to hold the specified construction permit.¹⁶¹ Within ten (10) business days after the date of the release of the public notice announcing that the Commission is prepared to grant a winning bidder's long-form application, each winning bidder will be required to submit the balance of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).¹⁶² Broadcast construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 C.F.R. § 1.2109(a).

C. Long-Form Applications

Within thirty days after the release of the auction closing notice, winning bidders must submit electronically a properly completed long-form application (FCC Form 301), and required exhibits, for each construction permit won through Auction No. 64. A winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit.¹⁶³ Further filing instructions will be provided to auction winners at the close of the auction.

D. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit timely a long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 C.F.R. § 1.2104(g)(2).¹⁶⁴ In such event, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount.¹⁶⁵ In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant.¹⁶⁶

E. Refund of Remaining Upfront Payment Balance

All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 64 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. In Auction No. 64, no refund will be made unless there are excess funds on deposit from the applicant. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

¹⁶¹ See 47 C.F.R. § 73.5006(d).

¹⁶² 47 C.F.R. §§ 1.2109. The Wireless Telecommunications Bureau now employs for wireless service auctions a final payment deadline which is different from the final payment deadline employed in Auction No. 64. See *e.g.*, Auction of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures, *Public Notice*, 18 FCC Rcd 17553, 17588 (Wireless Telecom. Bur. 2003).

¹⁶³ 47 C.F.R. §§ 1.2112(b) and 73.5005.

¹⁶⁴ See *Abundant Life, Inc.*, 17 FCC Rcd 4006 (2002) (“*Abundant Life*”); *Winstar Broadcasting Corp.*, 17 FCC Rcd 6126 (2002); *Delta Radio, Inc.*, 18 FCC Rcd 16889 (2003).

¹⁶⁵ See 47 C.F.R. § 1.2109(b) and (c).

¹⁶⁶ 47 C.F.R. § 1.2109(d).

Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers and have no remaining bidding eligibility must submit a written refund request. If the applicant has completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request also must include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund requests to:

Federal Communications Commission
Financial Operations Center
Auctions Accounting Group
Gail Glasser
445 12th Street, SW, Room 1-C864
Washington, DC 20554

Bidders are encouraged to file their refund information electronically using the **Refund Form** icon found on the *Auction Application Manager* page or through the **Wire Transfer for Refund Purposes** link available in various locations throughout the FCC Auction System, but bidders also can send their information by facsimile to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

NOTE: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578.

Media Contact:

For press inquiries: Chelsea Fallon (202) 418-7991

Video Division, Media Bureau:

For service rule questions: Shaun Maher at (202) 418-2324 or Shaleim Henry at (202) 418-1600

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau:

For legal questions: Lynne Milne at (202) 418-0660

For general auction questions: Debbie Smith or Lisa Stover at (717) 338-2888

To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

- FCC -

VI. ATTACHMENT A

This page was intentionally inserted as a placeholder for Attachment A, which is available as a separate file in Microsoft® Excel format.

VII. ATTACHMENT B

**FCC AUCTION NO. 64
SEMINAR REGISTRATION FORM**

The FCC will sponsor a one-day seminar for Auction No. 64 applicants. The seminar is free of charge and will provide information about pre-auction procedures, service and auction rules, conduct of the auction, and the FCC Auction System.

Representatives from each company may attend on a reservation basis, first-come first-served until room capacity is filled. The seminar will be held:

Wednesday, January 11, 2006
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Registration 10:00 a.m. - 10:30 a.m.

Seminar 10:30 a.m. - 2:00 p.m.

If hotel accommodations are needed

Please contact (888) 225-5322 (option #2) for a list of hotels in the area.

To register, complete the form below and
return no later than
Monday, January 9, 2006,
by facsimile to:

FCC Auction 64
Auctions and Spectrum Access Division
1270 Fairfield Road
Gettysburg, PA 17325-7245

FAX: (717) 338-2850

Phone: (717) 338-2888

Note: The seminar will also be available via webcast and may be viewed by clicking on the Auction Seminar link on the Auction No. 64 web page, <http://wireless.fcc.gov/auctions/64/>. For further information about accessing FCC webcasts, please visit <http://www.fcc.gov/realaudio/>.

I/We will attend the Auction No. 64 Seminar, scheduled for Wednesday, January 11, 2006.

Name of attendee: _____

Name of attendee: _____

Company name: _____

Company address: _____

Phone: _____ Fax: _____

VIII. ATTACHMENT C

**ELECTRONIC FILING AND REVIEW
OF THE SHORT-FORM APPLICATION (FCC FORM 175)**

PAPERWORK REDUCTION ACT NOTICE

The Federal Communications Commission uses information collected in FCC Form 175 in determining whether applicants are legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. In addition, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses the information in determining whether the applicant is eligible for the status requested. The Commission's auctions, including the collection of information to determine applicants' qualifications to participate pursuant to Commission rules and requirements, are designed to limit the competitive bidding to qualified applicants, to deter possible abuse of the bidding and licensing process, and to enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest.

The Commission estimates that each response to this collection of information will take on average of 1.5 hours. This estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0600). PLEASE DO NOT SEND COMPLETED APPLICATION FORMS TO THIS ADDRESS.

The information collected in FCC Form 175 is required to be filed by all applicants to participate in a Commission auction, pursuant to Section 309(j)(5) of the Communications Act and Section 1.2105 of the Commission's rules. See 47 U.S.C. § 309(j)(5), 47 C.F.R. § 1.2105. Information collected in a submitted FCC Form 175 will be available for public inspection.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a current valid OMB control number with this notice. This collection has been assigned OMB control number 3060-0600.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

APPLICATION PREPARATION AND SUBMISSION

An applicant must submit its short-form application (FCC Form 175) electronically, via the FCC Auction System. **The FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Friday, January 20, 2006.** Late applications or unconfirmed submissions of electronic data will not be accepted.

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine each applicant's qualifications, and as such will be available for public inspection. Accordingly, an applicant should not include any unnecessary sensitive information, such as Taxpayer Identification Numbers or Social Security Numbers, in its short-form application. Applicants may request that information submitted not be made routinely available for public inspection following the procedures set forth in 47 C.F.R. § 0.459. Pursuant to Section 0.459(a), such requests must be included as an attachment to FCC Form 175 and identify the information to which the request applies. Because the required information bears on each applicant's qualifications, confidentiality requests will not be routinely granted.

Applicants may make multiple changes to their FCC Form 175 applications until the close of the filing window. However, applicants must press the **SUBMIT** button in the FCC Auction System for the changes to be submitted and considered by the Commission.

Software Requirements

Applicants must meet the following minimum software requirements:

- Web Browser:
 - Microsoft® Internet Explorer 6.0 or higher (recommended). Your browser must have either Microsoft VM or Java Plug-In Version 1.4.2_05 installed.or
 - Netscape® Communicator™ 6.0 or higher, with Java Plug-In Version 1.4.2_05.

Java Plug-In Version 1.4.2_05 is available for downloading at http://java.sun.com/products/archive/j2se/1.4.2_05/index.html (choose the JRE version).

- PDF Viewer: Adobe Acrobat Reader 5.0 or higher (available at <http://www.adobe.com>)

A. Logging On

To submit an FCC Form 175 application electronically via the Internet, start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Once on the *FCC Integrated Spectrum Auction System* page, an applicant may log in to create a FCC Form 175 application using its FCC Registration Number (FRN) and password.

B. Application Filing Instructions

The on-line FCC Form 175 requests information needed to determine whether an applicant qualifies to participate in competitive bidding for Commission licenses or construction permits.¹⁶⁷ Pursuant to Section 1.2105(a), FCC Form 175 must be submitted electronically. The screens comprising FCC Form 175 consist of six series, each requesting separate types of information: 1) *Applicant Information*; 2) *Permit Selection*; 3) *New Entrant Bidding Credit Eligibility*; 4) *Agreements*; 5) *Ownership*; and 6) *Certify and Submit*. In addition, *Summary* screens, a seventh series, appear prior to the *Certify and Submit* screens. The *Summary* screens provide an overview of an applicant's FCC Form 175 that facilitates reviewing and revising specific information, as well as an automated check for certain inconsistencies and omissions in submitted information.

To simplify filling out FCC Form 175, certain initial information applicants provide is used to determine what additional information is needed, and what subsequent screens will appear to collect that information. For example, a corporate applicant, unlike an individual applicant, must identify a corporate officer or director responsible for the application (sometimes called a responsible party). If an applicant identifies itself as an individual, no additional information is needed regarding an additional responsible party, and screens requesting responsible party information will not appear. However, if the applicant identifies itself as a corporation, subsequent screens in the FCC Form 175 will ask for responsible party information.

Applicants should be able to fill out Form 175 by following the instructions below. Additional help in filling out FCC Form 175 can be accessed from the electronic FCC Form 175 in two ways: 1) by clicking on the **Help** link in the upper right of any screen, which will open Auction Application Online Filing Help; or 2) by clicking on the text of any **Common Question** link appearing on the right side of the screen. The common questions displayed relate to the current screen and vary from screen to screen. In the event the assistance provided by these sources is insufficient, filers should use the contact information provided in the *Procedures Public Notice* to obtain additional assistance.

1. Applicant Information

The *Applicant Information* screens are the first series of screens in FCC Form 175. In the *Applicant Information* screens, the applicant will provide basic information, including

- the applicant's legal classification, *e.g.*, individual, corporation, etc.
- optional information regarding the applicant's status as a minority- or woman-owned business or a rural telephone company
- whether the applicant requests its facility or facilities to be classified as Noncommercial Educational station or stations.¹⁶⁸
- the applicant's name, which will be used as the bidder name during the auction
- citizenship (for individuals), or jurisdiction of formation for legal entities
- for applicants classified as legal entities, *e.g.*, corporations and partnerships, the name of and information regarding the entity's responsible individual

¹⁶⁷ See generally, 47 C.F.R. § 1.2105.

¹⁶⁸ Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing. See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6700. Applicants specifying the same television station construction permit are considered mutually exclusive.

- the name, address, telephone and facsimile number of a contact person who will communicate with the Commission regarding the applicant's FCC Form 175
- the names of up to three persons authorized to bid for the applicant in the auction
- the applicant's preference for electronic or telephonic bidding

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- Applicants must indicate their legal classification before continuing to subsequent screens, because the legal classification will determine which subsequent screens will appear.
- P.O. Boxes may not be used for an applicant's address.
- To simplify filling out the FCC Form 175, an applicant that has the same address as its contact person can click on the **COPY APPLICANT ADDRESS** button to automatically fill in the contact person's address. P.O. Boxes may not be used for a contact person's address.
- Applicants must identify at least one authorized bidder. While applicants may change their authorized bidders at a later date, in Auction No. 64 only those bidders listed on the FCC Form 175 will be authorized to place bids for the applicant during the auction.
- Any qualified bidder may bid either via the Internet or by telephone during the auction. Specifying a preference for electronic or telephonic bidding assists the Commission in determining the staff required for telephonic bidding.
- Any application for a noncommercial educational station that is mutually exclusive with any application for a commercial station will be returned as unacceptable for filing.¹⁶⁹

2. Permit Selection

The *Permit Selection* screens make up the second series of screens in FCC Form 175. In the *Permit Selection* screens, the applicant will identify the construction permits on which the applicant may wish to bid during the auction. Applicants are not obligated to bid on all construction permits selected; however, applicants will not be able to bid on construction permits that they have not selected on the FCC Form 175.¹⁷⁰ Be advised that there is no opportunity to change this list once the short-form application filing deadline passes on January 20, 2006.

To participate in an auction, applicants must select at least one permit. Until the applicant selects a permit, the applicant cannot submit the FCC Form 175. An applicant's permit selections cannot be changed after the initial filing window has closed. Therefore, during the initial filing window it is important to carefully review permit selections to make sure all the construction permits on which the applicant may wish to bid have been selected.

The first *Permit Selection* screen, the *Select Permits* screen, contains two lists: 1) a list (on the left) of all construction permits on which the applicant may be eligible to bid ("Eligible Permits"); and 2) a list (on

¹⁶⁹ See *NCE Second Report and Order*, 18 FCC Rcd at 6699-6700. Applicants specifying the same television station construction permit are considered mutually exclusive.

¹⁷⁰ See generally, 47 C.F.R. §1.2105(a)(2)(i).

the right) of all construction permits selected by the applicant (“Selected Permits”). Applicants select construction permits by: 1) highlighting the construction permits to be selected in the Eligible Permits list; and then 2) clicking on the **ADD** button to move those construction permits to the Selected Permits list. Applicants can click on the **ADD** button multiple times, so applicants do not need to highlight all the construction permits in which they are interested before clicking on the **ADD** button.

Construction permits can be removed from the list of Selected Permits by: 1) highlighting the unwanted construction permits in Selected Permits; and then 2) clicking the **REMOVE** button. Applicants can click on the **REMOVE** button multiple times, so applicants do not need to highlight all the unwanted construction permits before clicking on the **REMOVE** button.

In either list, applicants can highlight a single construction permit by clicking on it. Applicants can highlight multiple construction permits by holding down the control key (Ctrl) and clicking on each construction permit the applicant wants to highlight. Alternatively, if an applicant wants to highlight multiple construction permits that appear sequentially in a list, applicants can click on the first construction permit in the sequence and then hold down the shift key while clicking on the last construction permit in the sequence. Finally, applicants can highlight all construction permits by clicking on the **SELECT ALL** button.

If the applicant previously has selected construction permits, the initial *Permit Selection* screen will be the *View/Edit Permit Selections* screen. This screen lists the construction permits previously selected for this auction. To select a new construction permit or remove a previously-selected construction permit, click the **Edit** icon next to Change Selection at the top-right corner of the list. This will take you to the original *Select Permits* screen, described above.

3. New Entrant Bidding Credit Eligibility

The *New Entrant Eligibility* screens are the third series of screens in FCC Form 175. On the initial screen, applicants indicate whether they are claiming the New Entrant bidding credit and, if so, whether they are claiming a 25 percent or 35 percent New Entrant bidding credit.

Applicants claiming either no New Entrant bidding credit or a 35 percent New Entrant bidding credit will not need to provide additional information in FCC Form 175 regarding their claimed New Entrant bidding credit. Such applicants will continue to the next series of screens.¹⁷¹

Applicants claiming a 25 percent New Entrant bidding credit must provide additional information regarding existing mass media facilities in which the applicant, or any individual or entity with an attributable interest in the applicant, has an attributable interest. Applicants must identify:

- the existing mass media facility or facilities;
- the individual or entity with an attributable interest in the existing mass media facility;
- the attributable interest in the facility; and
- whether any proposed broadcast facilities are in the ‘same area’ as existing mass media facilities, as defined by applicable Commission rules. *See* 47 C.F.R. §§ 73.5007, 5008.
- In the event that the applicant indicates that any of the proposed broadcast facilities are in the ‘same area’ as the identified existing mass media facility, the applicant must continue to an additional screen

¹⁷¹ Full-service noncommercial educational stations, on both reserved and nonreserved channels, are included among “media of mass communications” as defined in 47 C.F.R. § 73.5008(b). *See Minnesota Christian Broadcasters, Inc.*, 18 FCC Rcd 614 (2003), *aff’d sub nom. Carol DeLaHunt v. FCC*, No. 03-1029, slip op. (D.C. Cir. Feb. 4, 2004) (unreported opinion available at 88 Fed.Appx. 418 (D.C. Cir.), *aff’d sub nom. Minnesota Christian Broadcasters, Inc. v. FCC*, 411 F.3d 283 (D.C. Cir. 2005).

where the applicant must indicate which proposed broadcast facility in the auction is in the ‘same area’ as the identified existing mass media facility.

Once the applicant has identified all relevant existing mass media facilities, and all proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility, applicants will continue to the *View/Edit All Facilities* screen. This screen lists the applicant’s claimed New Entrant bidding credit of 25 percent, the relevant existing mass media facilities, and the proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility. From this screen, options include:

- Clicking the **Edit** icon or the **Modify bidding credit selection** link to return to the initial *New Entrant Eligibility* screen.
- Modifying information about relevant mass media facilities by clicking on them.
- Clicking the **Delete This Facility** link to delete a facility and identified proposed broadcast facilities in the ‘same area.’
- Modifying information regarding a proposed broadcast facility by clicking on its identifier.
- Clicking the **Remove** icon next to information about a particular proposed broadcast facility in the ‘same area’ to remove the corresponding facility.
- Clicking the **Add a proposed ‘Same Area’ Facility to [an existing mass media facility]** link to add a new proposed broadcast facility in the ‘same area.’
- Clicking the **CREATE NEW MASS MEDIA FACILITY** button to add additional mass media facilities.

When all relevant existing mass media facilities, and proposed broadcast facilities in the ‘same area’ as each relevant existing mass media facility, have been identified, click the **CONTINUE** button.

4. Agreements

The *Agreements* screens are the fourth series of screens in Form 175. In the *Agreements* screens, applicants will provide information regarding auction-related agreements subject to disclosure under the Commission’s rules.¹⁷²

On the first screen, applicants must state whether the applicant has any agreements that are subject to disclosure under the Commission’s rules by responding yes or no to a question asking whether the applicant has entered into partnerships, joint ventures, consortia or other agreements or understandings of any kind relating to the construction permits being auctioned, including any such agreement relating to the post-auction market structure. If an applicant answers “No,” the applicant will continue with the Ownership series of screens, described below. If the applicant answers “Yes,” the applicant will continue with additional *Agreements* screens described here.

In the additional *Agreements* screens, applicants must provide an identifying name for the agreement and must identify the parties, other than the applicant, to the agreement. The agreement identifier can be a

¹⁷² See generally, 47 C.F.R. § 1.2105(a)(2) (viii).

brief description of the agreement or a simple reference name; however, each agreement identifier must be unique.

In the event the other party to the agreement is an entity or an individual, different identifying information is required. For either entities or individuals, applicants may provide FCC Registration Numbers (FRNs), if available. Providing the FRN helps prevent identification errors resulting from parties having similar names or a single party using multiple names. Provision of a party's FRN is optional.

Up to three parties to the agreement (not including the applicant) can be identified on a single screen. Additional parties can be added by clicking the **ADD MORE PARTIES** button. In the event of an error, the name of a party and its associated FRN can be deleted from the form by clicking on the **RESET** button. After identifying all parties to a particular agreement, click the **FINISH THIS AGREEMENT** button.

The next *Agreements* screen is the *View/Edit Agreements* screen. This screen lists the agreements and parties to each agreement that already have been entered. From this screen, you have the following options:

- Clicking the **Edit** icon or the **Agreements** link to return to the initial *Agreements* screen regarding whether or not the applicant has any agreements.
- Modifying agreement identifiers by clicking on them.
- Clicking the **Delete This Agreement** link to delete an agreement and associated parties.
- Modifying information regarding a particular party to an agreement by clicking on the party's name.
- Clicking the **Remove** icon next to information about a particular party to remove the corresponding party.
- Clicking the **Add Party to This Agreement** link to add a new party to an agreement.
- Clicking the **CREATE NEW AGREEMENT** button to add additional agreements.

When you have identified all agreements and the parties to each agreement, click the **CONTINUE** button.

5. Ownership

The *Ownership* screens are the fifth series of screens in the FCC Form 175. In the *Ownership* screens, applicants will provide information regarding parties with ownership interests in the applicant that must be disclosed pursuant to Commission rules.¹⁷³ Commission rules also require the disclosure and description of FCC-regulated businesses that are owned by the applicant and parties with certain ownership interests in the applicant.¹⁷⁴

¹⁷³ See generally, 47 C.F.R. §§ 1.2105(a)(2)(ii)(B), 1.2110, 1.2112, 73.5002.

¹⁷⁴ See 47 C.F.R. § 1.2112.

a. Information Already On File with the Commission

Some applicants may have filed previously an FCC Form 602 disclosing ownership information in connection with wireless services. In addition, some applicants may have filed a short-form application (FCC Form 175) for a previous auction disclosing ownership information. To simplify filling out Form 175, an applicant's most current FCC Form 602 or FCC Form 175 ownership information on file with the Commission, if in an electronic format compatible with FCC Form 175, will automatically be entered into this FCC Form 175. Applicants with ownership information automatically entered into FCC Form 175 will proceed directly to the *View/Edit Ownership* screen described below.

Applicants are responsible for information submitted in its FCC Form 175 being complete and accurate. Applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for submitting this FCC Form 175. Applicants can update the information directly in the FCC Form 175. After the deadline for filing this FCC Form 175, ownership information in a submitted FCC Form 175 will be considered to be the applicant's most current ownership information on file with the Commission.

b. Disclosable Interest Holders and FCC-Regulated Businesses

- **Section 1.2112(a) of the Commission's rules lists the interest holders in the applicant that must be disclosed in FCC Form 175.**¹⁷⁵
- **Section 1.2112(a)(7) lists the FCC-regulated business entities, or applicants for an FCC license, that must be disclosed in FCC Form 175.**¹⁷⁶

The initial *Ownership* screen enables the applicant to: 1) add information regarding a disclosable interest holder; 2) add information regarding the FCC-regulated businesses in which the applicant has an interest; or 3) upload ownership information from a file prepared by the applicant.

Uploading information from a file prepared by the applicant is an alternative to individually keying information into the *Ownership* screens in FCC Form 175. Applicants may upload ownership data in a text file, which will then be processed and populated into the system as the applicant's current ownership filing (provided there were no errors). This feature may benefit those applicants with large amounts of ownership data that would otherwise have to be entered into the system manually. It also may benefit those applicants who previously provided ownership data to the FCC in a similar format for other purposes, such as in connection with filing FCC Form 602 in relation to wireless services. Instructions on how to prepare and upload such a file are provided at <http://wireless.fcc.gov/auctions/ownership-upload>. After a successful upload, the *Upload Ownership Disclosure Information Confirmation* screen will appear. Applicants then may click the **CONTINUE** button, which loads the *View/Edit Ownership* screen described below.

¹⁷⁵ 47 C.F.R. § 1.2112(a). Section 73.5002 specifies the bidding procedures, certification requirements and anti-collusion rules applicable to applications for commercial broadcast services that are subject to auction. Subsection (b) requires the timely submission of FCC Form 175 applications along with all required certifications, information and exhibits pursuant to 47 C.F.R. § 1.2105(a) and any Commission public notices. Section 1.2105 requires the disclosure on the short form application of applicant ownership information, as set forth in Section 1.2112. *See also* 47 C.F.R. § 1.2105(a)(2).

¹⁷⁶ 47 C.F.R. § 1.2112(a)(7).

Each screen will specify the information that the applicant must provide. Please note the following with respect to particular information requested:

- If an application includes one or more disclosable interest holders with an indirect ownership in the applicant,¹⁷⁷ the application must include an attachment regarding the relationship between the indirect interest holder(s) and the applicant. The attachment should provide an overview of the ownership chain that links the indirect owners to the applicant, *e.g.*, indirect owner X owns 50% of holding company Y; indirect owner Z owns 50% of holding company Y; and holding company Y owns 100% of the applicant.¹⁷⁸ One attachment connecting all indirect owners to the applicant is sufficient; a separate attachment for each indirect owner is not required. An overview of the ownership connections is sufficient; the attachment does not need to duplicate all the detailed information already provided in the FCC Form 175.
- The “Percent of Interest Held in Applicant” should reflect the disclosable interest holder’s aggregate ownership interest in the applicant. In some cases, *e.g.*, circumstances where there is joint ownership or indirect ownership resulting in different owners sharing the same ownership interests, the sum of all the percentages held by disclosable interest holders may exceed 100%.
- FCC-regulated businesses in which the applicant has an interest can be entered from the initial *Add Ownership Disclosure Information* screen. FCC-regulated businesses in which a disclosable interest holder has an interest can be entered from the *Add FCC Regulated Business* screen in the series of screens for entering information about a Disclosable Interest Holder.
- When adding an FCC-regulated business, “Percent of Interest Held” refers to the percent of interest held by the applicant or disclosable interest holder, as applicable, in the FCC-regulated business.
- To simplify filling out the FCC Form 175, applicants can click on the **select business(es) already submitted** link when entering an FCC-regulated business previously entered as an FCC-regulated business for the applicant or another Disclosable Interest Holder. When doing so, be certain to enter the “Percent of Interest Held” in the FCC regulated business by the current party, either the applicant or the disclosable interest holder, with respect to which the FCC-regulated business is being entered.

c. View/Edit Ownership Disclosure Information

The *View/Edit Ownership Disclosure Information* screen summarizes Ownership information already entered in FCC Form 175, either automatically from compatible ownership information on file with the Commission or directly by the applicant, and provides links enabling existing information to be revised and additional information to be added.

Existing ownership information is divided into two groups:

- Disclosable Interest Holders of this Applicant
- FCC Regulated Businesses of this Applicant

¹⁷⁷ See 47 C.F.R. § 1.2112(a)(6).

¹⁷⁸ *Id.*

To view the detailed information submitted regarding the applicant, a disclosable interest holder, or FCC-regulated business, click on the relevant party's name. To delete existing information or add a new entry in one of the categories, click on the relevant link. This screen also provides a link enabling applicants to add an FCC-regulated business directly to an existing disclosable interest holder, without needing to reenter the disclosable interest holder's information.

6. Summary

The *Summary* screens are the sixth series of screens in FCC Form 175. The *Summary* screens summarize information applicants have provided in previous screens, offering an overview of an applicant's FCC Form 175 to help locate specific information. The *Summary* screens will appear prior to the *Certify and Submit* screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for errors in the information submitted.

The first *Summary* screen, the *Summary Overview* screen, lists the first five series of screens in the application and provides a **VIEW/EDIT** button to access each one. Here is what happens if you click **VIEW/EDIT** for each series:

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing what you entered for each data entry field. To change any data item, click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Permit Selection takes you to the *View/Edit Permit Selection* screen discussed above in the Permit Selection section.
- Clicking **VIEW/EDIT** for New Entrant Eligibility takes you to the *View/Edit New Entrant Eligibility* screen discussed above in the New Entrant Eligibility section.
- Clicking **VIEW/EDIT** for Agreements takes you to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes you to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

Clicking on the **CHECK ERRORS** button initiates an automated check of the application. If the automated check encounters any errors that must be corrected before submitting the application, the error(s) will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding **EDIT** button. In addition, if the automated check encounters any apparent errors that might render the application incomplete if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent error, click its corresponding **EDIT** button.

Each Applicant is solely responsible for providing complete and accurate information in its FCC Form 175. The automated check is provided to assist applicants in completing FCC Form 175. However, the automated check cannot be relied upon to determine whether the information provided in the FCC Form 175 is complete or accurate. The automated check may not catch all errors and applicants cannot rely on the automated check to determine the completeness or the accuracy of submitted information.

If the automated check does not encounter any errors, a box will appear displaying the message “**No Errors found - You may continue to Certify and Submit.**” Applicants may then click the **CONTINUE TO CERTIFY** button.

7. Attaching Additional Information

If an applicant needs to provide additional information not requested directly in the screens comprising the FCC Form 175, additional information can be provided in an attachment.

The screen for adding an attachment to FCC Form 175 can be accessed by clicking on the **Attachments** link in the upper right of any screen. The *Add Attachment* screen requests information regarding the type of attachment to be added, the name of the file to be attached, and a brief description of the attachment. If the attachment is a request for a waiver of any of the Commission's rules or procedures, the applicant should identify the "Type" of attachment as a "Waiver" to facilitate prompt processing. Once the requested information is provided, applicants can add the attachment to the application by clicking on the **ADD ATTACHMENT** button.

A list of any attachments already uploaded along with the applicant's FCC Form 175 appears at the bottom of the screen.

When uploading attachments, applicants may use a variety of file formats-- including (but not limited to) Word 2000 or earlier, WordPerfect 5.x or later, Adobe PDF, and ASCII text--and must verify that the files contain all exhibit information. Files may be no larger than 10 Mb. Graphics files (e.g., .bmp, .tiff, .jpg) and spreadsheets (e.g., Excel, Lotus) are supported but not recommended. Files must not be password-protected.

8. Certify and Submit

The *Certify and Submit* screens are the seventh and final series of screens in FCC Form 175. In the *Certify and Submit* screens, applicants will provide certifications required of all participants in the Commission's competitive bidding processes.¹⁷⁹

The first *Certify and Submit* screen requires each applicant to indicate whether the applicant, any affiliate, any controlling interest, and any affiliate of a controlling interest have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency.¹⁸⁰ Applicants associated with a relevant entity that has been in default or delinquent may participate in an auction, if otherwise qualified. However, such applicants must submit an upfront payment equal to 50 percent more than otherwise required.¹⁸¹

The second *Certify and Submit* screen lists the certifications required of all applicants in the Commission's competitive bidding processes and requests that the applicant's certifying official be identified and sign the application. Any auction short-form application must be certified by: (1) the applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.¹⁸²

¹⁷⁹ See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

¹⁸⁰ See 47 C.F.R. § 1.2105(a)(2)(xi).

¹⁸¹ See 47 C.F.R. § 1.2106(a).

¹⁸² See 47 C.F.R. § 1.917.

All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.¹⁸³ Applicants are reminded that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

Once the two *Certify and Submit* screens have been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

FCC Form 175 applications must be submitted and confirmed prior to 6:00 p.m. ET on Friday, January 20, 2006. Late applications or unconfirmed submissions of electronic data will not be accepted.

9. Withdrawing an Application Before the Short-Form Filing Deadline And Updating Existing Applications

a. Withdrawing an Application

If you wish to withdraw a submitted application before the short-form filing deadline, click on the **Withdraw Application** icon on the *Auction Application Manager Create or Review Auction Applications* page and confirm that you want to withdraw your application. If you subsequently decide to file an application, you will have to re-enter all previously-submitted data. Applications may not be withdrawn after the short-form application filing deadline.

b. Updating Existing Applications

Once you have logged into the Auctions Application Manager, the *Create or Review Auction Applications* page displays any application you have created or submitted within a filing window. **Note:** This page shows the application status, the date and time the application was last updated; and the date and time the application was last submitted. You may use this page as a reference to confirm the date and time of your most recent submission of the application.

To review or continue working on an existing application, click its auction number. This produces the application's *Summary* page and places you in a view/edit mode. Applicants must go to the *Certify and Submit* screens and click the **SUBMIT** button to submit any changes made to their FCC Form 175. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with your unique file number. It is recommended that you print a copy of the confirmation page for your records. You may then view and print a copy of your submitted application by clicking on Print Preview.

¹⁸³ See generally, 47 C.F.R. § 1.2105(a)(2) (iv)-(vii) and (ix)-(xi).

After the short-form application filing deadline (6:00 p.m. ET January 20, 2006), applicants may make only minor changes to their applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the certifying official, change control of the applicant, or increase its bidding credit).¹⁸⁴

10. Upfront Payment Calculator and Form 159

You may access the **Upfront Payment Calculator and Form 159** from the *Create or Review Auction Applications* page and from the *Auction Application Submit Confirmation* page. When you click the **Upfront Payment Calculator and Form 159** icon or link, a page will be displayed where you can determine the appropriate upfront payment amount to submit with the FCC Form 159. From the *Calculate Upfront Payment* page, you may click the **Form 159** button to obtain the FCC Form 159.

11. Refund of Upfront Payment

On *My Auctions* page, click on the **See Wire Transfer for Refund Purposes** link to provide your wire transfer instructions for purposes of refunds of upfront payments. The Commission will use this information to refund excess funds on deposit upon receipt of a written refund request.

C. Application Review

Once the FCC has completed the short-form application review process, you can view FCC Form 175 applications electronically by searching for them in the FCC database. Start your web browser and point it to either <http://auctions.fcc.gov/> (primary location) or <http://auctions2.fcc.gov/> (secondary location). Click the **Auction Applications** link in the Public Access area on the *FCC Integrated Spectrum Auction System* page to start your search.

D. Technical Support

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

FCC Technical Support can also be contacted electronically by filling out a help request form at <https://esupport.fcc.gov/request.htm>. On the Submit Help Request page, select **Integrated Spectrum Auction System (ISAS)** from the “FCC System” drop-down.

¹⁸⁴ See 47 C.F.R. § 1.2105.

IX. ATTACHMENT D

**AUCTION-SPECIFIC INSTRUCTIONS FOR
FCC REMITTANCE ADVICE (FCC FORM 159-February 2003 Edition)**

A. Upfront Payments

The following information supplements the standard instructions for FCC Form 159 (Revised 2/03), and is provided to help ensure correct completion of FCC Form 159 for upfront payments for Auction No. 64. Applicants need to complete FCC Form 159 carefully, because:

- **Mistakes may affect bidding eligibility; and**
- **Lack of consistency between information provided in FCC Form 159 (Revised 2/03), FCC Form 175, long-form application, and correspondence about an application may cause processing delays.**

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the Short Form Application (FCC Form 175) are described below:

Block Number	Required Information
1	LOCKBOX # - Enter "358435"
2	Payer Name - Enter the name of the person or company making the payment. If the applicant itself is the payer, this entry would be the same as FCC Form 175.
3	Total Amount Paid - Enter the amount of the upfront payment associated with the FCC Form 159 (Revised 2/03).
4-8	Street Address, City, State, ZIP Code - Enter the street mailing address (not Post Office box number) where mail should be sent to the payer. If the applicant is the payer, these entries would be the same as FCC Form 175 from the Applicant Information section.
9	Daytime Telephone Number - Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code - For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
11	Payer FRN - Enter the payer's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
21	Applicant FRN (Complete only if applicant is different than payer.) – Enter the applicant's ten-digit FCC Registration Number (FRN) registered in the Commission Registration System (CORES).
24A	Payment Type Code - Enter "A64U"

- 25A Quantity - Enter the number "1"
- 26A Fee Due - Amount of Upfront Payment
- 27A Total Fee - Will be the same amount as 26A.
- 28A FCC Code 1 - Enter the number "64" (indicating Auction No. 64).

NOTES:

- Do not use Remittance Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- If applicant is different from the payer, complete blocks 13 through 21 for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since credit card payments will not be accepted for this auction, leave Section E blank.

B. Winning Bidder Requirements, Down Payments and Final Payments

SPECIFIC INFORMATION REGARDING DOWN PAYMENTS AND FINAL PAYMENTS WILL BE INCLUDED IN A POST-AUCTION PUBLIC NOTICE ANNOUNCING THE WINNING BIDDERS.

X. ATTACHMENT E

Smoothing Formula Equations

$$A_i = (C * B_i) + ((1-C) * A_{i-1})$$

$$I_{i+1} = \text{smaller of } ((1 + A_i) * N) \text{ and } M$$

$$X_{i+1} = I_{i+1} * Y_i$$

where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bidders submitting bids on the construction permit in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_{i+1} = percentage increment for the next round (round i+1)

N = minimum percentage increment or percentage increment floor

M = maximum percentage increment or percentage increment ceiling

X_{i+1} = dollar amount associated with the percentage increment

Y_i = provisionally winning bid amount from the current round

Examples

Permit 1

$$C=0.5, N = 0.1, M = 0.2$$

Round 1 (2 bidders submitting bids, provisionally winning bid = \$1,000,000)

1. Calculation of percentage increment for round 2 using the smoothing formula:

$$A_1 = (0.5 * 2) + (0.5 * 0) = 1$$

$$I_2 = \text{The smaller of } ((1 + 1) * 0.1) = 0.2 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 2 (using I_2 from above):

$$X_2 = 0.2 * \$1,000,000 = \$200,000$$

3. Minimum acceptable bid amount for round 2 = \$1,200,000

Round 2 (3 bidders submitting bids, provisionally winning bid = \$2,000,000)

1. Calculation of percentage increment for round 3 using the smoothing formula:

$$A_2 = (0.5 * 3) + (0.5 * 1) = 2$$

$$I_3 = \text{The smaller of } ((1 + 2) * 0.1) = 0.3 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 3 (using I_3 from above):

$$X_3 = 0.2 * \$2,000,000 = \$400,000$$

3. Minimum acceptable bid amount for round 3 = \$2,400,000

Round 3 (1 bidder submitting bids, provisionally winning bid = \$2,400,000)

1. Calculation of percentage increment for round 4 using the smoothing formula:

$$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$$

$$I_4 = \text{The smaller of } ((1 + 1.5) * 0.1) = 0.25 \text{ or } 0.2 \text{ (the maximum percentage increment)}$$

2. Calculation of dollar amount associated with the percentage increment for round 4 (using I_4 from above):

$$X_4 = 0.2 * \$2,400,000 = \$480,000$$

3. Minimum acceptable bid amount for round 4 = \$2,880,000

XI. ATTACHMENT F

SUMMARY LISTING OF COMMISSION AND BUREAU DOCUMENTS ADDRESSING APPLICATION OF THE ANTI-COLLUSION RULE

A. Commission Decisions:

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, FCC 94-61, *Second Report and Order*, 9 FCC Rcd 2348, 2386-2388 ¶¶ 221-226 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5570-5571 ¶¶ 91-92 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fourth Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 6858, 6866-6869 ¶¶ 47-60 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7245, 7253-7255 ¶¶ 48-55 (1994).

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Memorandum Opinion and Order*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7687-7689 ¶¶ 8-12 (1994).

Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture*, 10 FCC Rcd 4277 (1995), Commercial Realty St. Pete, *Memorandum Opinion and Order*, 11 FCC Rcd 15374 (1996).

Applications of Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970 (1997); Application of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755 (1998).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 463-469 ¶¶ 155-166 (1997).

Application of US West Communications, Inc., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8286 (1998); Notice of Apparent Liability for Forfeiture of US West Communications, Inc., *Order*, 14 FCC Rcd 8816 (1999).

Application of Western PCS BTA I Corp., *Notice of Apparent Liability for Forfeiture*, 13 FCC Rcd 8305 (1998); Notice of Apparent Liability for Forfeiture of Western PCS BTA I Corp., *Memorandum Opinion and Order*, 14 FCC Rcd 21571, 21577-78 ¶ 20 (1999).

Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

B. Wireless Telecommunications Bureau Decisions:

Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-13, *Order*, 11 FCC Rcd 9655 (Wireless Telecom. Bur. 1995).

Applications of GWI PCS, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 6441 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 18093 (Wireless Telecom. Bur. 1997).

Applications of High Plains Wireless, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 19627 (Wireless Telecom. Bur. 1997).

Applications of Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 5756 (Wireless Telecom. Bur. 1997).

1. Public Notices:

Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (Wireless Telecom. Bur. 1995).

FCC Staff Clarifies Application of Anti-Collusion Rule to Broadband PCS "C" Block Reauction, *Public Notice*, 11 FCC Rcd 7031 (Auc. Div. 1996).

Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, *Public Notice*, 11 FCC Rcd 10134 (Wireless Telecom. Bur. 1996).

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341 (Wireless Telecom. Bur. 1998).

2. Letters from the Office of General Counsel, the Wireless Telecommunications Bureau and the Media Bureau:

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcerio from William E Kennard, General Counsel, Federal Communications Commission (released October 25, 1996).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to Jonathan D. Blake from Kathleen O'Brien Ham, 10 FCC Rcd 13783 (Auc. Div. 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, 11 FCC Rcd 10895 (Auc. Div. 1996).

Letter to David L. Nace from Kathleen O'Brien Ham, 11 FCC Rcd 11363 (Auc. Div. 1996).

Letter to Elliott J. Greenwald from Christopher J. Wright, 13 FCC Rcd 7132 (Gen. Counsel 1998).

Letter to Robert Pettit from Margaret W. Wiener, 16 FCC Rcd 10080 (Auc. Div. 2000).

Letter to Colby M. May from Barbara A. Kreisman, Chief, Video Division, Media Bureau and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, DA 05-2445 (released September 13, 2005).

C. Enforcement Bureau Decisions:

Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626 (Enf. Bur. 2004).

Application of Northeast Communications of Wisconsin, Inc., *Forfeiture Order*, 19 FCC Rcd 18635 (Enf. Bur. 2004).

D. Civil Actions Initiated by U.S. Department of Justice:

U.S. v. Omnipoint Corp., Proposed Final Judgments and Competitive Impact Statements, Department of Justice, 63 FR 65,228 (November 25, 1998).

“Justice Department Sues Three Firms Over FCC Auction Practices,” *Press Release*, U.S. Department of Justice (November 10, 1998).

Complaint, *U.S. v. Omnipoint Corp.*, No. 1:98CV02750 (D.D.C. November 10, 1998).

Complaint, *U.S. v. Mercury PCS II, L.L.C.*, No. 1:98CV02751 (D.D.C. November 10, 1998).

Complaint, *U.S. v. 21st Century Bidding Corp.*, No. 1:98CV02752 (D.D.C. November 10, 1998).

How to Obtain Copies of the Anti-Collusion Decisions:

Many of the documents listed in this attachment can be retrieved from the following Commission web site: <http://wireless.fcc.gov/auctions/anticollusion>.

The documents may be located by using our search engine (select the link “search”). Documents retrieved from the web site are available in various formats including Word, WordPerfect, Acrobat Reader, Excel, and ASCII Text. To review a document in its entirety, including footnotes, it is necessary to access the document in WordPerfect, MS Word, or Acrobat Reader.

Additionally, all of the documents can be ordered in hard copy for a fee from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (800) 378-3160 (telephone) or <http://www.bcpweb.com>.